

REMARKS

This Amendment and Reply is intended to be completely responsive to the Non-Final Office Action mailed December 19, 2008. Applicants respectfully request reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow. No amendments have been made to the claims. Accordingly, Claims 38-62 will remain pending in the present Application upon entry of this Amendment and Reply.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claim Rejections - 35 U.S.C. § 103

On pages 2-15 of the Detailed Action, the Examiner rejected Claims 38-62 under 35 U.S.C. §103(a) as being unpatentable over European Published Patent Application No. EP 0846583 to Takeuch (“Takeuch”) in view of U.S. Patent No. 7,060,215 to Schoemann et al. (“Schoemann et al.”). This rejections should be withdrawn because Schoemann et al. is not available as a prior art reference against the claims of the present application, and because Takeuch taken alone, as acknowledged by the Examiner, does not disclose, teach or suggest the claimed inventions.

The Examiner relies upon Schoemann et al. for allegedly teaching “an angled surface that extends between the forward surface and the first side surface of the shut-off member” (independent Claim 38) and “a second shut-off member” (independent Claims 44 and 61). Applicant submits that the effective filing date of Schoemann et al. for these alleged teachings is March 19, 2003. Schoemann et al. is a continuation-in-part of U.S. Patent Application No. 10/207,333. Applicants have concluded that March 19, 2003 is the proper effective date for the subject matter that the Examiner is attempting to rely on Schoemann et al. for allegedly teaching because this subject matter was not disclosed in U.S. Patent Application No. 10/207,333.

A Declaration pursuant to 37 C.F.R. § 1.131 has been provided herewith, which proves that at least the inventions set forth in independent Claims 38, 44 and 61 of the present Application were conceived by the inventors in the United States prior to the March 19, 2003 effective date of Schoemann et al. In particular, the Declaration provides evidence that the invention of Claim 38, which includes an angled surface that extends between a forward surface and a first side surface of a shut-off member, and the invention of Claims 44 and 66, which include a second shut-off member, were conceived prior to the effective filing date of Schoemann et al. and that those involved in the conception, preparation, and filing of the present application engaged in reasonable due diligence from before the effective filing date of Schoemann et al. until the time of the August 25, 2004 filing date of the present Application. For example, the drawing on page 1 of Exhibit A shows the subject matter of a shut-off member having an angled surface, while the drawings on page 2 of Exhibit A shows the subject matter of a second shut-off member. The Declaration has been signed by Ronald A. Bozio as the inventor who conceived the ideas that the Examiner has attempted to rely on Schoemann et al. for allegedly teaching. Further, the Declaration provides facts in evidence of steps taken prior to the effective filing date of Schoemann et al. until the filing of the present Application to establish diligence and constructive reduction to practice of the present invention. In particular, the facts establish: (i) the inventors were working on the claimed inventions just prior to the effective filing date of Schoemann et al., as evidenced by the drawing dated February 14, 2003; (ii) the inventors submitted an invention disclosure form to their employer on April 23, 2003; (iii) their employer held a meeting on July 1, 2003 in which their employer instructed outside patent counsel to prepare a provisional patent application; (iv) patent counsel sent a draft of the provisional patent application to the inventors for review on August 22, 2003; (v) the provisional patent application was filed on August 25, 2003; and (vi) the present Application was filed on August 25, 2004 and properly claimed priority to the provisional patent application.

Accordingly, Schoemann et al. is not available as prior art against the independent claims. Moreover, it is not available as prior against the dependent claims at least because the only subject matter that the Examiner is relying on Schoemann et al. for allegedly teaching is the

subject matter referenced above, which Applicants have established as being conceived by the inventors in the United States prior to the March 19, 2003 effective date of Schoemann et al.

Accordingly, the rejection of Claims 38-62 should be withdrawn, because Schoemann et al. is not available as prior art against such claims, and because Takeuch taken alone, as acknowledged by the Examiner, does not disclose, teach or suggest the claimed inventions.. Reconsideration and withdrawal of the rejections of Claims 38-62 under 35 U.S.C. § 103(a) is therefore respectfully requested.

* * *

Applicants respectfully submit that each and every pending rejection has been overcome, and that the present Application is in a condition for allowance. In particular, even when the elements of Applicants' claims, as discussed above, are given a broad construction and interpreted to cover equivalents, the cited references do not teach, disclose, or suggest the claimed subject matter. Favorable reconsideration of the Application is respectfully requested.

Further, Applicants respectfully put the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present Application and should not be considered when evaluating any other patent or patent application including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

The Examiner is encouraged to contact the undersigned by telephone if the Examiner believes that another telephone interview would advance the prosecution of the present Application. Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 6/18/2009

By /Adam M. Gustafson/

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (414) 297-5652
Facsimile: (414) 297-4900

Adam M. Gustafson
Attorney for Applicant
Registration No. 54,601